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**STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF THE APPEAL  
PETITION FOR HEARING ON  
AIR QUALITY PERMIT NO. 8585.**

**No. EIB 21-48**

**Earth Care New Mexico  
By Miguel Acosta Munoz, Co-Director  
and Linda Marianiello, as an individual;  
Petitioners.**

**v.**

**New Mexico Environment Department**

**v.**

**Associated Asphalt and Materials, LLC  
Applicant.**

**Statement of Intent to Present Technical and Non-Technical Testimony**

Pursuant to 20.1.2.206 NMAC, Earth Care New Mexico, by Miguel Acosta Munoz, and Linda Marianiello, as an individual (hereinafter “Petitioners” or “Community”) hereby submit this Statement of Intent to Present Technical and Non-Technical Testimony at the hearing scheduled to begin on February 23, 2022. Petitioners filed this appeal of the New Mexico Environment Department’s approval of construction permit AQB-8585, issued to Associated Asphalt and Materials, LLC (“AAM”) for the consolidation and operation of a hot mix asphalt batch plant. Community files this appeal based on the New Mexico Environment Department’s (“NMED” or “Department”) failure to adequately address community comments and concerns related to the permitting of the AAM facility.

**I. Name of the Person Filing the Statement**

Petitioners, through counsel, Maslyn Locke and Eric Jantz of the New Mexico Environmental Law Center, submit this Statement of Intent to Present Technical and Non-Technical Testimony at the hearing scheduled for February 23, 2022.

II. Indication of Whether the Person Filing the Statement Supports or Opposes the Petition at Issue

Community files this Statement in support of Petition No. EIB-21-48.

III. The Name of Each Witness

1. Dr. Ranajit (Ron) Sahu
2. Dr. James J.J. Clark
3. Mr. Michael Schneider
4. Miguel Acosta will present non-technical testimony related to the interests of Earth Care New Mexico and its members in this matter.

IV. Estimated Length of the Direct Testimony of Each Witness

Community anticipates that Mr. Sahu's direct testimony will last approximately 60 minutes and reserves the right to call Mr. Sahu as a rebuttal witness.

Community anticipates that Dr. Clark's direct testimony will last approximately 60 minutes and reserves the right to call Dr. Clark as a rebuttal witness.

Community anticipates that Mr. Schneider's direct testimony will last approximately 60 minutes and reserves the right to call Mr. Schneider as a rebuttal witness.

Community anticipates that Mr. Acosta's direct testimony will last approximately 45 minutes and reserves the right to call Mr. Acosta as a rebuttal witness.

V. List of Exhibits

- A. Community EIB Exhibit 1: Written Report of Ranajit Sahu
- B. Community EIB Exhibit 2: Resume of Ranajit Sahu ( Sahu Report Attachment A)
- C. Community EIB Exhibit 3: AP-42 Continuous Drop Equation Powerpoint (Sahu Report Attachment B)
- D. Community EIB Exhibit 4: Written Report of James J. J. Clark
- E. Community EIB Exhibit 5: Resume of James J. J. Clark (Clark Report Ex. A)
- F. Community EIB Exhibit 6: List of Documents Reviewed (Clark Report Ex. B)
- G. Community EIB Exhibit 7: PM 2.5 Sampling Results from Runnel's Building Location (Clark Report Ex. C)
- H. Community EIB Exhibit 8: PM 2.5 Sampling Results from Airport Location (Clark Report Ex. D)
- I. Community EIB Exhibit 9: Plot File for 98<sup>th</sup> Percentile 24-hour Concentrations for 2016-2020 (Clark Report Ex. E)
- J. Community EIB Exhibit 10: Written Report of Michael Schneider
- K. Community EIB Exhibit 11: Resume of Michael Schneider
- L. Community EIB Exhibit 12: Executive Order 13985 (Schneider Report Attachment B)
- M. Community EIB Exhibit 13: Letter from Michigan Department of Environment, Great Lakes and Energy to EPA Administrator Regan (Nov. 15, 2021) (Schneider Report Attachment C)
- N. Community EIB Exhibit 14: EPA Letter to Air Quality Division of Environment, Great Lakes and Energy (Sept. 16, 2021) (Schneider Report Attachment D)
- O. Community EIB Exhibit 15: EJSCREEN Census Block Map (Schneider Report Attachment E)

P. Community EIB Exhibit 16: EJSCREEN Report (Schneider Report Attachment F)

Q. Community EIB Exhibit 17: State of New Jersey Department of Environmental

Protection Administrative Order No. 2021-25NJ Report, (Schneider Report Attachment G)

R. Community EIB Exhibit 18: US EPA Letter to National Environmental Justice Advisory Chair, 100 Day Letter (Oct. 9, 2021) (Schneider Report Attachment H)

S. Community EIB Exhibit 19: Michigan Department of Environment, Great Lakes and Energy Air Quality Division Permit to Install 90-21, Issued to Ajax Materials Corporation (Nov. 15, 2021) (Schneider Report Attachment I)

Community reserves the right to introduce and move for the admission of any additional exhibit in support of direct or rebuttal testimony at the hearing, subject to applicable procedures.

## VI. Summary or Outline of the Anticipated Direct Testimony of Each Witness

### 1. Dr. Ranajit (Ron) Sahu

Dr. Sahu is an independent environment and energy consultant with over thirty years of experience in the fields of environmental, mechanical and chemical engineering. He has extensive experience in air dispersion modeling, air pollution engineering and permitting and compliance under the Clean Air Act. He has provided consulting services to numerous private sector, public sector and public interest group clients. In addition to consulting, for approximately 20 years, Dr. Sahu taught numerous courses at several Southern California universities.

Dr. Sahu will be addressing the following matters in his report and will provide the following opinions:

- a. Regarding emissions estimates of the proposed operation:

(i) The calculations performed by the Applicant and approved by the Department to estimate the AAM facility's potential to emit (PTE) emissions for various air pollutants that will be emitted by various sources under the permit were derived almost exclusively using EPA's AP-42 compilation of emission factors;

(ii) The Applicant's use and the Department's approval of AP-42 factors in the present instance was improper and unreasonable for multiple reasons. First, AP-42 factors are expressly unsuitable for calculating PTE emissions because they represent averages of emissions rather than maximums as required to calculate PTE. Second, the U.S. EPA has expressly indicated that AP-42 emission factors should not be used to calculate emissions used to determine NAAQS compliance, except in exceptional circumstances, because AP-42 factors are inherently unreliable. In this case, no exceptional circumstances have been demonstrated and, in fact, because the AAM plant is currently operating, actual emissions data is readily available. Finally, in addition to being generally unreliable in predicting emissions from an individual source, EPA has rated individual AP-42 factors based on the quality of the data that were used to generate those factors. In this case, AAM used and NMED approved the use of AP-42 factors that are rated C or lower, which indicates even further unreliability because the factors are based on questionable data; and

(iii) The accuracy of the emissions estimated is an important consideration in the present instance because the Department has permitted the AAM operation with barely any margin between the predictions of the modeling conducted using the emission estimates and the compliance with certain NAAQS. Because AP-42 emission factors are so unreliable for predicting emissions from a particular source, and indeed the EPA expressly warns against such

use, the projected emissions from the AAM operation are certainly underestimated and will, in reality, violate several NAAQS.

b. Confusion Regarding “Ambient Air:”

(i) The treatment of ambient air as it has been used in addressing the modeled impacts of the permitted source outside its property fence-line is confusing; the Department appears to take conflicting stances on the issue of whether the AAM expected emissions contribute to found NAAQS exceedances at neighboring facilities and can be excluded from the definition of ambient air;

(ii) The record simply states the results of the air dispersion modeling demonstrate no NAAQS exceedances after the Applicant made adjustments to the emissions coming from neighboring facilities without any clarity or supporting documentation that can provide the public with a proper understanding of what the agency or applicant actually did to make these adjustments; and

(iii) That the Department should provide more details regarding adjustments made related to NAAQS exceedances found by the modeling. In conjunction with the shortcomings relating to emissions estimates explained above, the conclusions of the modeling analysis should be set aside and no weight should be given to them, because the Department may be inappropriately ignoring NAAQS exceedances found by the AAM modeling.

2. James J. J. Clark, PhD.

Dr. Clark is qualified to offer his expert opinion as the Principal Toxicologist/Air Dispersion Modeler at Clark and Associates Environmental Consulting, Inc. He holds a Bachelor’s Degree in Biochemical and Biophysical Sciences, a Master’s Degree in Environmental Health Sciences from the University of California at Los Angeles, School of

Public Health, and a Doctorate in Environmental Health Sciences from the University of California at Los Angeles, School of Public Health. Dr. Clark has participated in and/or directed numerous air/emission-related risk assessments, including toxicological assessment of benzene and other volatile substances from mobile and stationary sources and has extensive experience modeling exposure to toxic compounds. Dr. Clark also has extensive experience with air dispersion modeling, running and analyzing multi-year dispersion models for refining projects, evaluating dispersion modeling of criteria pollutants and particulate matter emissions, and reviewing exposure assessment modeling for human health risk assessments.

Dr. Clark will offer the following conclusions:

a. The Environmental Improvement Board should reverse the New Mexico Environment Department's decision to issue Permit No. 8585 to Associated Asphalt and Materials, LLC because the operation will result in exceedances of the NAAQS daily concentrations (24-hour period) of PM 2.5 based on the 98<sup>th</sup> Percentile concentrations for daily concentrations. The proposed AAM consolidation will result in NAAQS exceedances because:

b. The background concentration of PM 2.5 cited in the NMED guidance does not represent the current conditions in Santa Fe and is based on a limited data set of samples for a location that was shut down due to historically low readings in 2014, despite the existence of recent and representative data. The background concentration for the most recent 3-year sampling period (2019 through 2021) is approximately 20 percent higher than the value cited in the NMED guidance (11.45 ug/m<sup>3</sup> versus 9.45 ug/m<sup>3</sup>). Using an outdated background concentration that is lower than the most recent 3-year period ensures that NMED was able to avoid identifying NAAQS exceedances as a result of the AAM operation. The permittee must account for the background concentration of pollutants in their analyses to ensure that the

concentration of a pollutant in the environment does not exceed the NAAQS. NMED provides background concentration data to be used by applicants in their guidance. The citation from the NMED document regarding the background value for PM 2.5, however, is false and, if upheld by the EIB, will result in an operation that has been issued a permit despite its likely contribution to a NAAQS exceedance. Consistent with NMED guidance, NMED should have evaluated the impacts of the AAM project using the most recent background concentration data.

c. The spacing of the receptor grids used in the air dispersion modeling was not sufficiently fine to determine maximum pollution concentrations receptors will be exposed to in the model, despite the requirements found in NMED's own modeling guidance. To determine the concentration of each modeled pollutant, multiple receptor grids are used in the model to represent the discrete locations in which a person may live, work or recreate. Using a grid that is too coarse, (receptor points too far apart), as NMED did in this case, is the same as trying to measure a millimeter with yard stick. The grid utilized in the NMED analysis was not fine enough to determine the maximum concentration of emissions from the AAM facility for either the 24-hour PM 2.5 average or the annual PM 2.5 average. Additional clarity to the model output, i.e. the expected pollution concentration at any receptor, is added when the distance between receptors is decreased, providing a clearer picture of whether a facility will exceed the NAAQS. NMED's testimony that reducing the receptor grid distance beyond 50 meters would result in false/abnormally high values is unsupported in the literature or guidance from authoritative bodies.

d. The air quality analysis performed by the Applicant and approved of by the Department was skewed by the manner in which it was performed. Re-analysis of the 24-hour maximums using five years of meteorological data, the most recent 3-year sampling data for



Santa Fe, and finer receptor grids confirmed that the AAM facility will cause an exceedance of the 24-hour PM 2.5 standard and have a negative impact on local air quality.

### 3. Michael Schneider

Mr. Schneider is qualified to offer this opinion because he is an experienced air quality professional who worked for the New Mexico Environment Department as an Environmental Scientist from 1993 until retiring in 2017. Mr. Schneider has extensive experience drafting and enforcing permit conditions to ensure that ambient air quality standards are met, and he has worked specifically issuing construction permits for hot mix asphalt plants.

Mr. Schneider will offer the following opinions:

a. The EIB should reverse the New Mexico Environment Department's decision to issue Permit No. 8585 because the expected emissions of the AAM operation were calculated using old and incomplete background PM 2.5 concentration data, in violation of Department guidelines. The use of this data is especially egregious given the existence of an equivalent air monitor located near the proposed plant location that has been in operation and collecting data since 2013. The Santa Fe Airport monitor is located nearby and has been collecting data since the 2014 shut down of the monitor relied on by the Department. The Department seems to have ignored the existence of the Airport Monitor and its up-to-date data entirely, for seemingly no reason other than the use of such data would have required either permit denial or stricter permitting conditions to ensure AAM's compliance with the NAAQS. The Department seemingly chose administrative expediency over performing due diligence in this permit application review, forgetting that permitting decisions have very real impacts on the communities that live nearby. This failure to use up to date and complete data is especially

problematic when AAM's permitted limits are considered: using this flawed data, the project is expected to operate at 97.2% and 99.3% of the 24-hour and annual PM 2.5 NAAQS.

b. The permit should be remanded back to the New Mexico Environment Department for additional consideration of the cumulative impacts of air pollution from AAM and neighboring sources on nearby communities prior to being approved by the Department. The US Environmental Protection Agency has directed all EPA offices to clearly integrate environmental justice concerns into their plans and actions, meaning that the EPA is working to better consider the fair treatment and meaningful involvement of all people, regardless of race, color, culture, national origin and income and educational levels, when it comes to the development, implementation and enforcement of environmental laws, regulations and policies. As a state agency guided by EPA policy, NMED should follow this most recent directive in order to protect the environment and the quality of life of New Mexico residents. Though considering environmental justice impacts in permitting decisions is not required by the permitting regulations, the Department has made clear that it can, if willing, go beyond the regulations for the benefit of the community. Because the AAM operation is proposed to be permitted in a community that is already heavily populated by industrial facilities, in close proximity to housing and community centers and schools, is primarily Hispanic and scores in the 75<sup>th</sup> percentile for multiple EJSCREEN EJ Indicators, NMED should consider environmental justice concerns when issuing permits in this area.

c. Lastly, if the Environmental Improvement Board determines that the air pollution permit was issued in accordance with EPA and NMED guidelines and applicable law, which it was not, Mr. Schneider will offer the opinion that various permit conditions should be strengthened in order to best protect the health and welfare of the nearby communities. Because

the purpose of an air quality permit is to establish emission limits and other operational requirements to ensure NAAQS are met, issuing a permit with weak, unenforceable conditions will likely result in emissions in quantities that are greater than those represented in the application. Permit conditions should be strengthened and should include ongoing monitoring of emissions coming from the AAM facility. Further, the Department should commit to performing surprise inspections of the AAM operation giving the thin margin for error if the plant is permitted to operate so close to the NAAQS and applicable standards.

#### 4. Miguel Acosta

Mr. Acosta will testify to the interests of Earth Care New Mexico and its membership in this Matter. Earth Care is an empowerment and community development organization serving neighborhoods in the Airport Road corridor. The Southside of Santa Fe has not seen adequate or equitable public investment in green spaces, culturally or linguistically relevant services, or community development resources, when compared to other parts of Santa Fe. Earth Care provides resources and events that engage Southside Santa Fe residents across generations to make a positive impact in the community and improve environmental and social conditions. Earth Care also coordinates the Santa Fe Mutual Aid project, hosting community events and, to date, redistributing \$324,000 to community members in Santa Fe, particularly on the South side, for groceries, medicine, household supplies, and rent.

Earth Care's membership is composed of anyone who serves on any campaign or participates in classes, programs and list serves. The membership is geographically based – because most members live, work, and play on Santa Fe's South side, the Southside is Earth Care's primary membership area and area of attention.

Respectfully submitted on this 8th day of February, 2022.

/s/ Maslyn Locke

Maslyn Locke

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## CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2022, I filed and served the foregoing Statement of Intent to Present Technical and Non-Technical Testimony by electronic mail delivery to the following:

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